



## Macmillan Cancer Support standard conditions of purchase

### 1. DEFINITIONS

1.1 The following definitions and rules of interpretation apply in these Conditions:

'**Agreement**' means agreement between the Buyer and the Supplier for the supply of Goods and/or Services in accordance with these Conditions;

'**Buyer**' means MACMILLAN CANCER SUPPORT a charity registered in England & Wales (charity number 261017), Scotland (charity number SC039907) and the Isle of Man (charity number 604), and a company limited by guarantee incorporated and registered in England & Wales (company number 2400969) and the Isle of Man (company number 4694F), and whose registered office is at 3rd Floor, Bronze Building, The Forge, 105 Sumner Street, London, SE1 9HZ or any other Macmillan affiliate as set out in the relevant Order.

'**Conditions**' means these conditions of purchase as may be amended from time to time in accordance with clause 3;

'**Deliverables**' means all documents, products and materials developed by the Supplier as part of or in relation to the Services in any form or media;

'**Delivery Location**' means to the Buyer's premises as is set out in the Order or as instructed by the Buyer prior to delivery;

'**Force Majeure**' means any event beyond the reasonable control of the party claiming to be affected thereby including without limitation acts of God, storms, war, fire or flood, or rules or regulations of any authority asserting jurisdiction or control where compliance with such actions or rules and regulations makes continuance of the Agreement impossible, and whose effects they could not have avoided and cannot be overcome by the use of reasonable diligence and foresight;

'**Goods**' means the goods (or any part of them) set out in the Order;

'**Intellectual Property Rights**' means copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered which subsist or will subsist now or in the future in any part of the world;

'**Order**' means the Buyer's written order to purchase the Goods and/or Services incorporating these Conditions as set out in the Buyer's purchase order form, or in the Buyer's written acceptance of the Supplier's quotation, as the case may be;

'**Services**' means the services, including any Deliverables, to be provided by the Supplier under the Agreement as set out in the Order;

'**Supplier**' means the person, firm or company from whom the Buyer purchases the Goods and/or Services or its agents, contractors and employees who are involved in the provision of the Goods and/or Services; and

'**Working Day**' means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

#### 1.2 Interpretation:

(a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its successors and permitted assigns.

(c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

(d) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(e) A reference to writing or written includes email.

#### 2. APPLICATION OF TERMS

2.1 Subject to variation under clause 3, these Conditions are the only Conditions upon which the Buyer is prepared to deal with the Supplier and they shall govern the Agreement to the entire exclusion of all other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 Each Order for Goods and/or Services by the Buyer shall be deemed to be an offer by the Buyer to purchase Goods and/or Services from the Supplier subject to these Conditions.

2.3 The Order shall be deemed to be accepted on the earlier of:

(a) the Supplier giving written notice of acceptance of the Order; or

(b) any act by the Supplier consistent with fulfilling the Order, at which point the Agreement shall come into existence.

2.4 No terms delivered with or contained in the Supplier's quotation, acknowledgment of acceptance of order, specification or otherwise shall form part of the Agreement and the Supplier waives any right which it otherwise might have to rely on such terms.

2.5 The Supplier acknowledges that it has not entered into the Agreement in reliance upon any representation which is not incorporated into these Conditions or referenced in the Order.

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

#### 3. CHANGES

3.1 The Buyer may by written notice request changes to the Goods and/or Services which may include additions to or reductions to the Order.

3.2 If the Buyer requests a change the Supplier shall within 5 Working Days following receipt of the Buyer's request provide a written estimate to the Buyer of: (a) the likely time required to implement the change; (b) if applicable, any variation to the price, which shall be no higher than the Supplier standard prices then in force; and (c) any other likely impact of the change.

3.3 If the Buyer does not wish to proceed there shall be no change; or if the Buyer wishes the Supplier to proceed with the change, the Supplier shall so do on written agreement between the Parties of the necessary variations to the Order.

3.4 Where a party is unable to perform the Order in the time specified by reason of an event of Force Majeure, they shall be entitled to seek a reasonable

extension of time for performance and should immediately notify the other party in writing and estimate how long these circumstances are likely to continue, and notify in writing what steps it is taking and will take to mitigate the effects of the event of Force Majeure. The affected party shall take all reasonable steps to avoid further or consequential delay and to proceed with the due performance of the Order. If a Force Majeure prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 15 Working Days, the Buyer may terminate the Agreement immediately by giving written notice to the Supplier.

#### 4. SUPPLY OF GOODS AND SERVICES - GENERAL

4.1 The Supplier shall from the date set out in the Order and for the duration of the Agreement supply the Goods and/or Services to the Buyer in accordance with the terms of the Agreement.

4.2 The Supplier shall supply the Goods and perform the Services in accordance with: (i) all applicable laws, regulations, regulatory requirements (including those relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods), guidelines or industry codes which apply to the provision of the Services which, for the avoidance of doubt include but are not limited to the following (or, if and to the extent that they are updated and/or superseded, the applicable update and/ or replacement): the Modern Slavery Act 2015, the Bribery Act 2010 and the anti-avoidance rules of the Finance Act 2016; and (ii) all reasonable directions given by the Buyer

#### 5. SUPPLY OF GOODS

5.1 The Supplier shall ensure that:

(a) the Goods shall correspond with their description and any applicable Goods specification;

(b) the Goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Buyer, expressly or by implication, and in this respect the Buyer relies on the Supplier's skill and judgement;

(c) the Goods shall, where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and

(d) the benefit of any warranties, made by the manufacturer of the Goods, is assigned to the Buyer and, where reasonably required, the Supplier shall co-operate with any additional arrangements required to provide the Buyer with the benefit of such warranties or like conditions including enforcement for the benefit of the Buyer.

5.2 The Supplier shall deliver the Goods to the Delivery Location on the date specified in the Order (or, if no such date is specified, then within 10 Working Days of the date of the Order), during the Buyer's normal hours of business on a Working Day, or as instructed by the Buyer.

5.3 The Supplier shall ensure that:

(a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition and a delivery note including the purchase order number must accompany each delivery and be displayed prominently;

(b) any packaging material shall only be returned to the Supplier at the sole cost of the Supplier.

5.4 Title and risk in the Goods shall pass to the Buyer on completion of unloading of the Goods at the Delivery Location.

## 6. SUPPLY OF SERVICES

6.1 The Supplier shall meet any performance dates for the Services specified in the Order or as notified by the Buyer to the Supplier from time to time in writing.

6.2 Performance of the Services shall take place during the Buyer's normal hours of business on a Working Day, or as instructed by the Buyer.

6.3 In providing the Services, the Supplier shall:

(a) co-operate with the Buyer in all matters relating to the Services, and comply with all instructions of the Buyer;

(b) perform the Services with the best care, skill and diligence in accordance with the best practice in the Supplier's industry, profession or trade;

(c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Agreement;

(d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Order, and that the Services and Deliverables will be fit for any purpose that the Buyer expressly or implicitly makes known to the Supplier. Buyer will no later than 15 Working Days from receiving a Deliverable indicate in writing its approval or otherwise of the Deliverable. If the Deliverable is not approved, the Supplier will promptly (and in any event within 15 Working Days) modify, replace or reperform at no extra cost to Buyer, to reflect written feedback provided by Buyer;

(e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;

(f) obtain and at all times maintain all licences, approvals and consents which may be required for the provision of the Services;

(g) observe all general health and safety rules and regulations applicable and any other security requirements that apply at the Buyer's premises;

(h) hold all materials, specifications and data supplied by the Buyer to the Supplier ("Buyer Materials") in safe custody at its own risk, maintain the Buyer Materials in good condition until returned to the Buyer, and not dispose or use the Buyer Materials other than in accordance with the Order or written approval of the Buyer.

6.4 The Supplier shall maintain complete and accurate records of the time spent, and materials used in providing the Services in such form as the Buyer shall approve. The Supplier shall allow the Buyer to inspect such records at all reasonable times on request. Supplier shall supply at its own expense certificates of analysis, tests, inspection or origin as may be required by law which shall in any event be delivered to Buyer no later than the Services to which they relate.

6.5 The Buyer shall:

(a) provide the Supplier with reasonable access at reasonable times to the Buyer's premises for the purpose of providing the Services; and

(b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

## 7. REMEDIES

7.1 If the Supplier fails to deliver the Goods and/or perform the Services in accordance with the Order, the Buyer shall, without limiting its other rights or remedies, be entitled:

(a) to terminate the Agreement with immediate effect by giving written notice to the Supplier;

(b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;

(c) to recover from the Supplier any costs incurred by the Buyer in obtaining substitute Goods and/or Services from a third party;

(d) where the Buyer has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered, to have such sums refunded by the Supplier; and

(e) to claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Supplier's failure to meet such commitments.

7.2 If the Supplier has delivered Goods that do not comply with clause 5.1, then, without limiting or affecting other rights or remedies available to it, the Buyer shall have one or more of the following rights, whether or not it has accepted the Goods:

(a) to terminate the Agreement with immediate effect by giving written notice to the Supplier;

(b) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;

(c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;

(d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

(e) to recover from the Supplier any expenditure incurred by the Buyer in obtaining substitute goods from a third party; and

(f) to claim damages for any additional costs, loss or expenses incurred by the Buyer arising from the Supplier's failure to supply Goods in accordance with clause 5.1.

7.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

7.4 The Buyer's rights under this Agreement are in addition to any other implied or statutory rights and shall not exclude any other rights howsoever arising.

## 8. PRICE AND PAYMENT

8.1 The price for the Goods and/or Services is as set out in the Order and is inclusive of the costs of packaging, insurance and carriage of the Goods.

8.2 The price for the Goods and/or Services is fixed and not subject to escalation. No extra charges shall be effective unless agreed in writing and in advance by the Buyer.

8.3 The Supplier acknowledges that except as specifically provided in the Order the rates and prices contained therein are sufficient to cover the supply of all Goods and/or Services under the Order.

8.4 The price is exclusive of VAT which shall be payable by the Buyer subject to receipt of a valid invoice. All other taxes shall be paid by the Supplier.

8.5 In respect of the Goods, the Supplier shall invoice the Buyer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Buyer on completion of the Services.

8.6 The Supplier shall send all invoices, credit notes and supporting documentation to the following electronic address: P2P@macmillan.org.uk.

8.7 The Supplier shall comply with the following when submitting invoices or credit notes via email. Failure to comply with these requirements will result in delays or rejections of invoices and any amounts referenced in the invoice are not payable until a valid invoice is submitted to Buyer in accordance with this Agreement:

(a) Supplier name and invoice number shall be stated on the email subject field;

(b) If submitting more than one invoice per email, each invoice should be attached separately;

(c) The invoice and supporting documents shall be in PDF format only. All invoices shall include, as a minimum, the following information:

(i) The purchase order reference number provided by the Buyer, relevant to the specific Order being invoiced;

(ii) Invoice number and date;

(iii) Exact legal names of Supplier and Buyer;

(iv) All banking details necessary for BACS transfer;

(v) Meaningful description of the Goods and/or Services;

(vi) Timesheets and/or expense statements approved by Buyer where applicable;

(vii) The currency in which payment is due which, unless otherwise stated in the Order, shall be pound sterling; and

(viii) VAT, where applicable, shall be shown separately on all invoices as a strictly net extra charge;

(d) Invoices should, ideally, also include the following information:

(i) Contact person or position for invoice and telephone number; and

(ii) Invoice tax point, if different from invoice number.

8.8 Unless otherwise specified in the Order payment will be made by BACS within 30 days receipt of a valid invoice. Payment shall not operate as a waiver of any of the rights of Buyer under the Order or otherwise.

8.9 Without prejudice to any other right or remedy it may have the Buyer reserves the right to set off any amount owing at any time to it by the Supplier against any amount payable by the Buyer to the Supplier under the Agreement.

8.10 If payment is not made in accordance with clause 8.8, the Supplier reserves the right to charge interest at a rate of 2% plus the Bank of England base rate on the overdue balances for the period from the date on which the payment became due until the date on which payment is made. This clause will not be applicable where payment has been delayed where an invoice has been disputed in whole or in part, including but not limited to invoices that do not meet the requirements set out in clause 8.6 and 8.7.

## 9. INTELLECTUAL PROPERTY RIGHTS

9.1 Subject to clause 9.3, all Intellectual Property Rights in the Deliverables will be owned by the Buyer and the Supplier assigns and will assign with full title guarantee all Intellectual Property Rights in the Deliverables to the Buyer.

9.2 To the extent the Deliverables contain elements of the Supplier's background Intellectual Property Rights and, unless otherwise agreed in writing by the Buyer, the Supplier grants to the Buyer a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence to use, copy and modify the Supplier's background Intellectual Property Rights in the Deliverables for the purpose of receiving and using the Services and the Deliverables in its business.

9.3 Nothing in this clause shall be deemed to assign or transfer the Supplier's or Buyer's background Intellectual Property Rights which are and shall remain the exclusive property of the party owning them.

9.4 The Supplier shall procure the waiver of all moral rights in the Deliverables unless otherwise agreed in writing by the Parties.

#### 10. INSURANCE

10.1 The Supplier shall maintain in force for the duration of the Agreement and 1 year thereafter with reputable insurers insurance in an amount sufficient to cover its liabilities under the Agreement, including public liability insurance and employer's liability insurance and product liability insurance of no less than £1 million per claim. Upon the Buyer's request, the Supplier will provide a copy of such insurance certificates.

#### 11. INDEMNITIES

11.1 The Supplier shall indemnify the Buyer against all liabilities, costs, expenses, damages and losses awarded against or incurred by the Buyer arising as a result of or in connection with:

(a) any claim made against the Buyer for infringement (including any alleged or presumed threat to infringe) of a third party's intellectual property rights arising out of or in connection with the manufacture, supply or use of Goods, or receipt, use or supply of the Services; or

(b) any claim made against the Buyer in respect of any liabilities, losses, damages, injury, costs or expenses sustained by the Buyer or its employees to the extent such loss, liability or damages arises from acts or omissions of the Supplier in relation to the Agreement.

#### 12. CONFIDENTIALITY AND DATA

12.1 Neither party shall disclose to any third party or use, other than for the purposes of discharging its obligations or exercising its rights under the Agreement, any information concerning the Agreement or of a secret or confidential nature acquired by it concerning the business or affairs of the other party and each party will use all reasonable endeavours to prevent its employees or former employees from doing so. This clause shall not apply to information which either party is required by law to disclose. This clause shall survive termination of the Agreement.

12.2 Data and detailed records relating to the Supplier and Order (including past Orders) will be held and used by the Buyer in a manner compliant with our legal requirements and industry standard practices. The data held will include details collected as part of registering and assessing the Supplier, processing an Order, or processing an invoice, including names, addresses, bank account details and contact details of individuals at the Supplier. Data held will be available to personnel at the Buyer, who may require access in order to process invoices, consider placing a potential Order or undertake other tasks consistent with a Buyer-Supplier relationship.

12.3 Except for any personal data which is shared in accordance with clause 12.2, the Parties shall not process or share any personal data under the Agreement unless or until (i) Buyer completes as reasonably required data protection impact assessments or transfer risk assessments in relation to such processing or sharing and (ii) as applicable, additional data protection terms are agreed in writing by the Parties, in advance of any such processing or sharing of personal data.

#### 13. TERMINATION

13.1 Either party shall have the right to terminate the Agreement immediately by serving written notice on the other party without prejudice to the existing rights and obligations of Supplier and Buyer if:

(a) the other party has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors, or a resolution is passed or a petition presented to any court for the winding-up of the other party or for the granting of an administration order in respect of the other party, or any proceedings are commenced relating to the insolvency or possible insolvency of the other party; or

(b) the other party suspends or ceases or threatens to suspend or cease to carry on its business or a substantial part of its business; or

(c) the other party commits a material or persistent breach of the Agreement and where remediable, fails to remedy that breach within 5 Working Days of receipt of notice in writing of the breach; or

(d) the other party repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement.

13.2 Without affecting any other right or remedy available to it, the Buyer may terminate the Agreement:

(a) with immediate effect by giving notice to the Supplier if:

(i) the Supplier's financial position deteriorates to such an extent that in the Buyer's opinion the Supplier's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy; or

(ii) the Supplier by act or omission does anything which does or may, in the sole opinion of the Buyer, bring the Buyer's name into disrepute or damage the Buyer's reputation, goodwill or business interests; or

(iii) the Supplier commits a breach of clause 4.2. ,

(b) for convenience by giving the Supplier one month's written notice.

No such termination shall relieve the Buyer or Supplier of any of their obligations as to any Goods delivered and/or Services already performed or work in progress (provided that the Supplier shall on receipt of such notice take immediate steps to mitigate any further or unnecessary costs being incurred, unless directed otherwise by the Buyer).

13.3 Upon termination, all Goods and other Deliverables, whether or not complete, shall be immediately delivered to the Buyer and become the property of the Buyer. The Supplier shall immediately return all materials belonging to the Buyer.

13.4 Termination of the Agreement, however arising, shall not prejudice any rights and remedies accrued by either party before termination.

13.5 Clauses which expressly or by implication survive termination of the Agreement shall continue in full force and effect.

#### 14. GENERAL

14.1 The Agreement shall be governed by and construed in accordance with English law and both Parties submit to the exclusive jurisdiction of the English courts.

14.2 A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent

right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

14.3 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

14.4 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, nor constitute either party the agent of the other for any purpose.

14.5 Except as set out in these Conditions, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Parties.

14.6 The Supplier may not assign, transfer or sub-contract, purport to assign, transfer or sub-contract the benefit or burden of the Agreement without the prior written consent of the Buyer. If the Supplier sub-contracts any of its benefits or burdens of the Agreement, it shall be responsible for the acts and/or omissions of its sub-contractor.

14.7 The Parties to the Agreement do not intend that any term of the Agreement shall be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.8 Any notice required to be given by either party stated respectively under this Agreement shall be in writing and addressed to the other party at its registered office or principal place of business unless another address is notified in writing by one party to the other party - which for the Buyer shall be the following email address with "Notice" in the subject line of the email: [legalenquiries@macmillan.org.uk](mailto:legalenquiries@macmillan.org.uk)